

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHAMARE H. MAYS,	:	
Petitioner,	:	
v.	:	Case No. 3:13-cv-191
WARDEN, WARREN	:	JUDGE WALTER H. RICE
CORRECTIONAL INSTITUTION	:	
Respondent.	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS ON PETITIONER'S
OBJECTIONS, CONSTRUED AS A MOTION FOR RELIEF FROM
JUDGMENT (DOC. #9); OVERRULING PETITIONER'S OBJECTIONS
(DOC. #8); DENYING CERTIFICATE OF APPEALABILITY AND
ANTICIPATED MOTION FOR LEAVE TO APPEAL *IN FORMA*
PAUPERIS; JUDGMENT TO BE ENTERED AGAINST PETITIONER;
CASE TO REMAIN TERMINATED

On September 17, 2013, the Court adopted United States Magistrate Judge Merz's July 1, 2013, Report and Recommendations, and dismissed the Amended Petition for Writ of Habeas Corpus, Doc. #6, with prejudice. Judgment was entered the same day. Doc. #7. On September 23, 2013, Petitioner filed Objections to the Report and Recommendations. Doc. #8. This was two full weeks beyond the filing deadline, and nearly one week after judgment was entered against him.

On September 25, 2013, Magistrate Judge Merz issued a Report and Recommendations on Petitioner's Objections, which he construed as a motion for

relief from judgment under Federal Rule of Civil Procedure 60(b). Doc. #9.¹ He held that, even if Petitioner showed excusable neglect for failing to file the Objections in a timely manner, he failed to show that they were meritorious. Magistrate Judge Merz therefore recommended that the Court deny the motion, and deny a certificate of appealability. Petitioner was notified of his right to file objections to the Report and Recommendations, and of the consequences of failing to do so. He requested an extension of time and was given until November 6, 2013, to file objections. Nevertheless, no objections were filed within the time allotted.

Based on the reasoning and citations of authority set forth by Magistrate Judge Merz in his September 25, 2013, Report and Recommendations, Doc. #9, as well as upon a thorough, *de novo* review of the Court's file and the applicable law, the Court ADOPTS said judicial filing in its entirety, and OVERRULES Petitioner's Objections, Doc. #8, which the Court construes as a motion for relief from judgment under Federal Rule of Civil Procedure 60(b).

Given that Petitioner has, once again, not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would


¹ Magistrate Judge Merz noted that the Certificate of Service indicated that Petitioner had delivered the Objections to the prison staff on September 9, 2013, which would render them timely under the mailbox rule. He found, however, that Petitioner's statement concerning delivery appeared to be false, since it does not take two weeks for mail to travel from Lebanon to Dayton. He ordered Petitioner to file all future Certificates of Service by declaration or affidavit under penalty of perjury.

not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment shall be entered against Petitioner.

The captioned case shall remain terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: November 14, 2013



WALTER H. RICE
UNITED STATES DISTRICT JUDGE